

Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DEBORAH H. BEATON,

Plaintiff,

v.

JPMORGAN CHASE BANK N.A.,
NORTHWEST TRUSTEE SERVICES, INC.

Defendant.

NO. 11-CV-0872-RAJ

**DEFENDANT CHASE'S
OPPOSITION TO PLAINTIFF'S
MOTION FOR RELIEF FROM
DEADLINE RE CHASE'S FRCP
12(b)(6) MOTION TO DISMISS
PLAINTIFF'S [FIRST] AMENDED
COMPLAINT FOR DAMAGES**

NOTING DATE: February 3, 2012

I. INTRODUCTION AND RELIEF REQUESTED

Defendant JPMorgan Chase Bank, N.A. ("Chase"), by its attorneys David A. Weibel and Barbara L. Bollero of Bishop, White, Marshall & Weibel, P.S., requests the Court deny Plaintiff's Motion for Relief from Deadline [Dkt. 42]. Should the Court determine to award Plaintiff the requested relief and grant Plaintiff additional time to

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FROM DEADLINE RE CHASE'S FRCP
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COMPLAINT FOR DAMAGES - 1

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NO. 11-CV-0872-RAJ

1 oppose Chase's FRCP 12(b)(6) Motion to Dismiss Plaintiff's [First] Amended Verified
 2 Complaint for Damages [Dkt. 34], then Chase requests Plaintiff be granted no more four
 3 additional days to respond to Chase's dismissal motion.

4 II. STATEMENT OF FACTS

5 Nine days before the nonjudicial foreclosure Trustee's sale of her real property, on
 6 May 25, 2011, Plaintiff Deborah Beaton filed her original Complaint in this action for
 7 declaratory and injunctive relief against Chase and co-defendant Northwest Trustee Services,
 8 Inc. ("NWTs") to quiet title to the Property. [Dkt. 1.] On July 22, 2011, NWTs filed a
 9 dismissal motion for failure to state a claim, which was joined by Chase. [Dkts. 25, 28.]
 10 Plaintiff opposed dismissal, and simultaneously requested leave to amend. [Dkts. 29, 30.]

11 The Court allowed Plaintiff's amendment, and found the original dismissal motion
 12 moot. [Dkt. 33.] Plaintiff's present [First] Amended Complaint followed [Dkt. 34], along
 13 with Ms. Beaton's "Memorandum in Support of Amended Verified Complaint" [Dkt. 34-1]
 14 and "Affidavit of Note Maker in Support of Amended Verified Complaint" [Dkt. 34-2].

15 More recently, Chase filed a Motion to Dismiss Plaintiff's [First] Amended
 16 Complaint for Damages, which NWTs joined. [Dkts. 38, 41.] Chase's dismissal motion was
 17 noted for January 27, 2012, requiring Plaintiff's responsive pleadings, if any, be filed and
 18 served by Monday, January 23, 2012, pursuant to Local Rules W.D.Wash. CR 7(d)(3). Chase
 19 has received no opposition pleadings from Plaintiff. [Bollero Declaration in Opposition to
 20 Plaintiff's Motion for Relief from Deadline ("Bollero Dec."), par. 2.]

21 Late the afternoon of the due date for Plaintiff's opposition pleadings, at
 22 approximately 4:15 p.m. on Monday, January 23, 2012, Chase's counsel was informed by the

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1 Court Clerk that the *Pro Se* Plaintiff communicated *ex parte* with the Court and requested an
2 extension to file her opposition, because she had experienced a power outage due to the
3 winter storm the preceding week. [*Id.*, par. 3.] Chase's counsel immediately communicated
4 with Ms. Beaton, suggested the parties may be willing to stipulate to extend time for filing of
5 her opposition, and invited communication on the issue. [*Id.*, pars. 4-5, Exs. A-B.] Despite
6 receiving that communication, Ms. Beaton did not respond. [*Id.*, par. 6.]

7 On the noting date for Chase's dismissal motion, Friday, January 27, 2012, Plaintiff
8 filed and served the present Motion for Relief from Deadline [Dkt. 42]. The motion does not
9 state:

- 10 1. a noting date;
- 11 2. the length of time Plaintiff was hampered by a power outage;
- 12 3. the reason the motion was delayed four days after the due date for Plaintiff's
13 opposition;
- 14 4. the fact of Chase's counsel's offer to consider extending Plaintiff's deadline
15 for filing her opposition;
- 16 5. the reason Plaintiff did not communicate any response to that offer;
- 17 6. whether Plaintiff has commenced preparing the opposition briefing and, if so,
18 the estimated time of completion; and
- 19 7. whether Plaintiff has any meritorious defenses to the dismissal motion.

20 In view of the foregoing, Chase requests Plaintiff's Motion for Relief from
21 Deadline be denied. Should the Court determine to award Plaintiff the requested relief and
22 grant Plaintiff additional time to oppose Chase's FRCP 12(b)(6) Motion to Dismiss

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1 Plaintiff's [First] Amended Verified Complaint for Damages [Dkt. 34], then Chase
 2 requests Plaintiff be granted no more than the time power was reported to be out in the area
 3 of Plaintiff's residence, four days after entry of the Order, to respond to Chase's dismissal
 4 motion. [Bollero Dec., pars. 7-9.]

5 **III. STATEMENT OF LAW**

6 Motions to shorten time have been abolished in the U.S. District Court for the
 7 Western District of Washington. Local Rules W.D.Wash. CR 6(e). All motions shall
 8 indicate the date they are to be noted for consideration. Local Rules W.D.Wash. CR 7(b)(1).
 9 Motions for relief from a deadline should be noted the second Friday after they are filed and
 10 served. Local Rules W.D.Wash. CR 7(d)(2)(A).

11 "The decision to extend a deadline is committed to the discretion of the Court. ...
 12 A motion for extension of time filed *before* a deadline has passed should 'normally ... be
 13 granted in the absence of bad faith on the part of the party seeking relief or prejudice to the
 14 adverse party.' ... On the other hand, if such a motion is filed *after* the deadline has
 15 passed, the good cause standard becomes more stringent. In these cases, the Court should
 16 grant the motion only when the moving party missed the deadline due to 'excusable
 17 neglect.'" *PLU Ivstmst., LLC v. Intraspact Group, Inc.*, 2011 WL 1376192, *1
 18 (W.D.Wash.) (citations omitted).

19
 20 "[C]ourts generally look unfavorably on eleventh-hour requests for relief from a
 21 deadline. This court is no exception. Barring unforeseen circumstances, a request for
 22 relief from a deadline ought to come well in advance of the deadline, as the court's local

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1 rules envision. Here, the ... Government does not explain why it could not have moved
 2 for an extension of time much sooner. The court accordingly denies the motion. Only the
 3 court's preference for resolving matters on their merits prevents it from striking the
 4 Government's untimely response.” *U.S. v. Sacks*, 2011 WL 6883740, *2 (W.D.Wash.).

5 “[Plaintiff] offered another litany of excuses, mainly relating to a lightning strike
 6 which disabled his internet connection The [Court’s denial of plaintiff’s] motion for
 7 extension of time ... is proper under Fed. R. Civ. P. 6(b)(1)(B), as plaintiff has failed to
 8 demonstrate that his late filings resulted from excusable neglect. The lightning strike
 9 might serve as an excuse for one day's delay, but not three. Instead, ... plaintiff ... simply
 10 wanted more time to complete his memoranda.” *Phillips v. The Seattle Times Co.*, 2011
 11 WL 4712196, *4 (W.D.Wash.).

12 All motions requiring consideration of facts not appearing of record shall be supported
 13 be evidence. Local Rules W.D.Wash. CR 7(b)(1).

14 **IV. DISCUSSION AND ARGUMENT**

15 Here, Ms. Beaton has offered no evidence, discussion or reasoning concerning her
 16 request for additional time to oppose Chase’s dismissal motion. Even accepting her
 17 unverified representation that she lost power and was hampered in preparing the pleading,
 18 the Court and parties left to wonder what efforts were made to comply with the deadline.
 19 Further, there is no indication the length of time she was left without power, and whether
 20 that affected both her work and home locations. The former seems highly unlikely, given
 21 that she is employed at a hospital which likely did not experience power disruption, or had
 22 back-up service available. [Bollero Dec., pars. 7-9.]

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1 In addition, after the Clerk informed Ms. Beaton that a motion for relief was
 2 required, the Court and parties are also left to wonder why Ms. Beaton chose to wait
 3 another four days to act on the Clerk's advice. Moreover, Ms. Beaton not only failed to
 4 accept the olive branch tendered by Chase in proposing a stipulation for additional time,
 5 she did not even acknowledge receiving it. Nor has she stated any viable specific defenses,
 6 or even asserted the existence of such defenses.

7 Under these circumstances, it seems evident that the present deadline relief motion,
 8 and the manner in which its filing and lack of a noting date was handled, was designed to
 9 further delay a ruling on Chase's dismissal motion, rather than to enable Plaintiff to present
 10 any viable defenses to that motion. Should the Court be so inclined to grant Plaintiff
 11 additional time, then Chase requests the extension be limited to four days from the date of
 12 the Court's Order – the length of time power was out in some areas of King County.

13 V. CONCLUSION

14 In consideration of the foregoing points, authorities, and discussion, Chase requests
 15 Plaintiff's Motion for Relief from Deadline be denied.

16 Should the Court determine to award Plaintiff the requested relief and grant
 17 Plaintiff additional time to oppose Chase's FRCP 12(b)(6) Motion to Dismiss Plaintiff's
 18 [First] Amended Verified Complaint for Damages [Dkt. 34], then Chase requests Plaintiff
 19 be granted no more four days from the date of the Court's Order to respond to Chase's
 20 dismissal motion. Simply put, after two attempts and several rulings by this Court,
 21 Plaintiff has failed to establish that she has any viable claims against Chase.

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1 Dated this 30th day of January, 2012.

2
3 /s/ Barbara L. Bollero

4 David A. Weibel, WSBA #24031

5 Barbara L. Bollero, WSBA #28906

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